

Friday 17 August 2012

## Insurance, Banking, Construction & Government

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**Hornsby Shire Council v The Valuer General of New South Wales** - determination of separate question - withdrawal of admissions (I, B, G)

**Curtis v Harden Shire Council** - negligence - statutory defence - *Wednesbury* unreasonableness (I)

**Egan v Mangarelli & Ors** - negligence - unreliability of plaintiff's evidence - contributory negligence (I)

**Woolworths Ltd v Walker** - cross-vesting application - interests of justice (I)

**Australia DIS Pty Ltd v Deputy Commissioner of Taxation** - appeal from decision refusing to set aside statutory demand (B, G)

**Attorney-General for the State of Victoria v Shaw** - application to set aside order declaring defendant vexatious litigant (I, B, C, G)

**Nicholls v Elgas Ltd & Woolacott** - personal injury - duty of care - assessment of damages (I)

## Summaries with links (5 minute read)

### **Hornsby Shire Council v The Valuer General of New South Wales [2012] NSWSC 894**

Supreme Court of New South Wales

Garling J

Defendant seeking leave to have administrative law proceedings heard and determined before a claim for damages and to withdraw various admissions - court's discretion to make order for separate hearing and determination of part of a matter: r28(2) *Uniform Civil Procedure Rules* 2005 (NSW) - necessity for court to give effect to provisions of s56 *Civil Procedure Act* 2005 (NSW) - principles to be applied when deciding whether to exercise discretion: *Idoport Pty Ltd v National Australia Bank* [2000] NSWSC 1215 - whether in interests of justice to allow leave to withdraw admissions - proceedings not reached the stage where it would be unjust to allow a withdrawal, no irremediable prejudice.

[Hornsby Shire Council](#) (I, B, G)

### **Curtis v Harden Shire Council [2012] NSWSC 757**

Supreme Court of New South Wales

Fullerton J

Negligence - driver fatality on newly resurfaced road - whether Council provided adequate signage - whether breach of duty to exercise reasonable care - whether statutory defence under s43A *Civil Liability Act* 2002 (NSW) (**Act**) - 'but for' test for factual causation s5D of the Act - *Wednesbury* unreasonableness: *Allianz Australia Insurance Ltd v Roads and Traffic Authority of New South Wales*; *Kelly v Roads and Traffic Authority of New South Wales* [2010] NSWCA 328

[Curtis](#) (I, C, G)

**Egan v Mangarelli & Ors [2012] NSWSC 867**

Supreme Court of New South Wales

Hoeben J

Negligence - collision between bicycle and bus - unreliability of plaintiff's evidence – inability of expert evidence to fill factual gaps – inability of plaintiff to prove alleged breach of duty or breach of duty on part of bus driver - objective test for contributory negligence: *Joslyn v Berryman & Anor* [2003] HCA 34 - assessment and apportionment of contributory negligence - assessment of damages on contingent basis.

[Egan](#) (I)

**Woolworths Ltd v Walker [2012] NSWSC 914**

Supreme Court of New South Wales

Johnson J

Application for cross-vesting of civil proceedings commenced in New South Wales to Victoria under s5(2)(b)(ii)(C) *Jurisdiction of Courts (Cross-Vesting) Act* 1987 (NSW) (**Act**) - case law principles concerning relevant provisions of the Act and considerations pertinent to decision whether transfer of proceedings in interests of justice: *BHP Billiton Ltd v Schultz* [2004] HCA 61 - weighing of competing considerations - application refused. .

[Woolworths](#) (I)

**Australia DIS Pty Ltd v Deputy Commissioner of Taxation [2012] VSC 331**

Supreme Court of Victoria

Ferguson J

Appeal from decision refusing to set aside statutory demand for amounts due pursuant to running balance account under the *Taxation Administration Act* 1953 (Cth) - whether demand may be set aside on grounds that it misdescribes debt and is therefore defective: ss9 and 459J(1)(a) *Corporations Act* 2001 (Cth) (**Act**) - whether demand may be set aside on grounds of genuine dispute as to existence or amount of debt demanded: s459G(1) of the Act - plaintiff's onus of establishing existence of genuine dispute.

[Australia DIS](#) (B, G)

[Australia DIS](#) – decision at first instance

**Attorney-General for the State of Victoria v Shaw [2012] VSC 334**

Supreme Court of Victoria

J Forrest J

Defendant declared vexatious litigant - defendant sought to have order set aside - court's power to set aside order: s21(5) *Supreme Court Act* 1986 (Vic) - relevant considerations to setting aside order declaring person a vexatious litigant: *Attorney-General for the State of Victoria v Kay* [2009] VSC 337 - defendant's onus to show change in relevant circumstances and show no real risk of engaging in conduct which led to order being made - consideration of numerous subpoenas issued by defendant and defendant's written and oral submissions.

[Attorney-General for the State of Victoria](#) (I, B, C, G)

[Attorney-General for the State of Victoria](#) – decision at first instance

**Nicholls v Elgas Ltd & Woolacott [2012] ACTSC 128**

Supreme Court of the Australian Capital Territory

Master Harper

Personal injury - explosion of overfilled gas cylinder - foreseeability of explosion when overfilled cylinder placed near ignition source - foreseeability of positioning of cylinder near barbecue and candles - whether breach of duty of care - assessment of damages.

[Nicholls](#) (I)

**The Pike**

By Amy Lowell

In the brown water,  
Thick and silver-sheened in the sunshine,  
Liquid and cool in the shade of the reeds,  
A pike dozed.  
Lost among the shadows of stems  
He lay unnoticed.  
Suddenly he flicked his tail,  
And a green-and-copper brightness  
Ran under the water.





Out from under the reeds  
Came the olive-green light,  
And orange flashed up  
Through the sun-thickened water.  
So the fish passed across the pool,  
Green and copper,  
A darkness and a gleam,  
And the blurred reflections of the willows on the opposite bank  
Received it.

<http://www.poetryfoundation.org/bio/amy-lowell>

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